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11 Attorneys for Defendant JAMES ARTHUR RAY

12 SUPERIOR COURT OF STATE OF ARIZONA
13 COUNTY OF YAVAPAI

14 **STATE OF ARIZONA,**

15 Plaintiff,

16 vs.

17 **JAMES ARTHUR RAY,**

18 Defendant.
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CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
MOTION FOR MISTRIAL BASED ON
INTENTIONAL AND WILLFUL
SUPPRESSION OF EXCULPATORY
EVIDENCE**

EMERGENCY HEARING REQUESTED

IN THE COURT
YAVAPAI COUNTY, ARIZONA

2011 APR 11 AM 10:08

CLERK

BY: BOBBI JO BALL

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Defense has just learned of a constitutional violation that eclipses all other issues that
4 have been litigated in this trial. For the past eleven months, the State has suppressed material,
5 exculpatory evidence. The evidence—an expert witness report prepared by an environmental
6 scientist at the State’s request—identifies a different cause of death and a different culpable party
7 than those which the State has alleged throughout this case. This amounts to a severe violation of
8 *Brady v. Maryland*, Arizona Rule of Criminal Procedure 15.1(b)(8), and Due Process. The trial’s
9 entire trajectory has been infected, and the Court and jury misled, because of the suppression.
10 The prejudice to the Defense cannot be cured. Under clearly established law, a mistrial must be
11 granted, and retrial barred.

12 **II. STATEMENT OF FACTS**

13 **A. Richard Haddow’s April 29, 2010 Report**

14 The Defense now knows that in April 2010, two months after indicting Mr. Ray, the State
15 of Arizona consulted with an environmental expert, Richard Haddow. Mr. Haddow’s report
16 informed the State that, in his view, the construction or design of specific aspects of the sweat
17 lodge caused or contributed to the deaths in this case.¹ The sweat lodge, of course, was designed
18 and constructed by Angel Valley, not by JRI, let alone by Mr. Ray himself. In critical part, the
19 report states the following:

- 20 • “A contributing cause of Liz [Neuman]’s hyperthermia is based on the rock pit’s
21 offset of center.”
22 • “The NW section” of the sweat lodge “experienced hazardous concentrations of
23 carbon dioxide (a condition known as hypercapnia)” and “experienced a radiant
24 heat barrier that would greatly contribute to the section’s air stagnation and build
25 up of carbon dioxide” that would “severely limit” ventilation and “air exchange.”
26

27 ¹ Mr. Haddow’s report, attached as Exhibit A, was emailed to Detective Ross Diskin on April 29, 2010.
28 Evidence that Mr. Haddow’s report was forwarded by Detective Diskin to *additional persons* has been
redacted in the copy provided to the defense on April 4, 2011.

- “Both hyperthermia and hypercapnia will cause and multiply the adverse effects to the body’s ability to self regulate the gaseous components of the blood chemistry.”
- “The lodge construction created a nearly airtight structure.”
- “The rock pit radiant heat would create positive pressure inside the lodge” that “would lessen the lodge’s ability to exchange inside air to outside ambient air.”

In other words, the document, on its face, identifies both a different cause of death, excessive carbon dioxide, and a different culpable party, those who designed and built the sweat lodge. At a minimum, the report calls into serious question the investigation in this case and the decision to maintain this prosecution against Mr. Ray. More powerfully, the report exculpates Mr. Ray by indicating that unforeseeable, technical aspects of the sweat lodge’s design could have caused the deaths in this case. And given the facts of this case, and the intense focus on the issues of causation and knowledge, this exonerating evidence is of paramount importance.

B. The Defense’s multiple requests for disclosure of the report were ignored or denied.

The chronology of discovery in this case reveals a pattern of intentional and willful suppression by the State:

- The State did not disclose Mr. Haddow’s opinion in April 2010, as *Brady* and Rule 15.1(b)(8) require.
- The State continued to withhold Mr. Haddow’s opinion despite the prosecution’s knowledge that causation was a central focus of the Defense case. This knowledge was cemented by, *inter alia*, Mr. Ray’s notice of defenses in his initial disclosure filed March 15, 2010, his supplemental disclosure filed July 1, 2010, and his motion to compel information regarding the meeting with medical examiners filed June 29, 2010.
- The Defense did not even learn of Mr. Haddow’s existence until seven months later, on October 27, 2010, when the State first listed him as an expert witness. Other than listing Haddow’s name and address, the State’s Fifteenth disclosure said only this: “May testify as to air quality and environment within sweat lodge.

1 *No report prepared in this case.*” State’s Fifteenth Disclosure, 10/27/10, at 2
2 (attached as Exhibit B).

- 3 • On November 18, the Defense requested “any and all statements made by Steven
4 Pace and Richard Haddow, pursuant to Ariz. R. Crim. P. 15.1(b)(4), 15.1(e)(3),
5 and 15.4(a)(1). Please include the notes of Mr. Pace and Mr. Haddow, *in addition*
6 to the materials that fall within your mandatory disclosure obligations under these
7 rules.” Letter from Truc Do to Sheila Polk, 11/18/10, p.4 (attached as Exhibit C).
8 The State responded to other matters raised in the letter, but made no mention of
9 Mr. Haddow and provided no corresponding disclosure.
- 10 • On December 7, the Defense requested an interview of Mr. Haddow, along with
11 any “results” or “statements” from the witness, as provided under Rules 15.1(b)(4)
12 and 15.1(e)(3). *See* Letter from Truc Do to Sheila Polk, 12/7/10 (attached as
13 Exhibit D).
- 14 • The State promptly replied that it was withdrawing Mr. Haddow as a witness. *See*
15 Letter from Sheila Polk to Truc Do, 12/10/10 (attached as Exhibit E). The State
16 provided no disclosure of Mr. Haddow’s opinion or statements, notwithstanding
17 that the withdrawal of Mr. Haddow as a testifying witness does not diminish the
18 State’s disclosure duty under *Brady* or Arizona’s rules 15.1(b)(4), 15.1(b)(8), and
19 15.1(e)(3).²
- 20 • On February 4, 2011, having received no further information regarding Mr.
21 Haddow, the Defense specifically requested disclosure of communications
22 between the State and Mr. Haddow, as well as materials that were provided to him.
23 *See* Letter from Truc Do to Sheila Polk, 2/4/11, p.6 (attached as Exhibit F).
- 24 • The State did not respond to the February 4 request.

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26 ² It is well established, as this Court noted in its Order of December 1, 2010, that “the State’s obligation
27 under Rule 15.1(b)(4) applies to all experts, regardless of whether or not the State intends to call the expert
28 at trial, and arises once the expert has examined the defendant or considered any evidence in the particular
 case.” Under Advisement Ruling on Motion for Protective Order Re: State’s Notes from Interviews,
 12/1/10, at 2–3.

- 1 • On March 31, 2011, the Defense *again* renewed its request for disclosure of Mr.
2 Haddow's opinions. *See* Letter from Truc Do to Sheila Polk, 3/31/11, p.2
3 (attached as Exhibit G).
- 4 • In the meantime, throughout the pendency of this case, the Defense also made
5 multiple requests for disclosure of *Brady* material. The State has consistently
6 represented, to the Defense and in open court, that all *Brady* material had been
7 disclosed. *See, e.g.*, Letter from Sheila Polk to Truc Do, 6/10/10 (attached as
8 Exhibit H) ("Please rest assured all of the evidence in this case has been disclosed
9 to you in compliance with Rule 15.1, Ariz. R. Crim. P. We have fully complied
10 with our Brady obligation and will continue to do so."); Trial Transcript, 3/23/11,
11 274:13–16 (attached as Exhibit I) ("We provided everything we have, and as the
12 Court and defense knows, as we continue to come upon new evidence, we
13 continue to send it over to them very timely."). *See also* Draft Trial Transcript,
14 4/1/11, at 3–5 (attached as Exhibit J) ("[W]e turned over everything we have to the
15 [defense].").
- 16 • On April 4, 2011—over eleven months after learning of Haddow's opinion, and
17 after *four* specific requests, the State included in its 50th Disclosure Mr. Haddow's
18 preliminary report.³
- 19 • The Defense still has not received any of Mr. Haddow's reliance materials or any
20 other opinions, statements, or results he may have rendered in connection with this
21 case.

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27 ³ The State included the report among numerous other documents, and accordingly, provided the
28 disclosure on a CD. The Defense uploaded and sorted the CD's documents the following business day,
 and reviewed the report for the first time on Friday, April 8, 2011.

1 **III. ARGUMENT**

2 **A. The State's suppression of exculpatory evidence for eleven months violates**
3 ***Brady v. Maryland* and Due Process.**

4 Under *Brady* and its progeny, the Due Process Clause is violated when (1) the State
5 suppresses evidence; (2) the evidence is favorable to the accused; and (3) the evidence is material.
6 *E.g., United States v. Bagley*, 473 U.S. 667 (1985). There is no doubt that all three requirements
7 are satisfied here.

8 **1. The State failed to disclose the evidence.**

9 The State suppressed Mr. Haddow's expert opinion for at least eleven months. This is a
10 black and white violation of the State's affirmative duty to disclose all potentially exculpatory
11 evidence, a duty which ensures the role of "the criminal trial, as distinct from the prosecutor's
12 private deliberations, as the chosen forum for ascertaining the truth about criminal accusations."
13 *Kyles v. Whitley*, 514 U.S. 419, 440 (1995). The State's disclosure duty applies with equal force
14 even where the Defense makes no request. *Id.* at 433. The violation here is more egregious
15 because the Defense *did* request the evidence, *multiple* times. "When the prosecutor receives a
16 specific and relevant request, the failure to make any response is seldom, if ever, excusable."
17 *United States v. Agurs*, 427 U.S. 97, 106 (1976).⁴

18 Moreover, the duty to disclose set forth in Arizona law sweeps even more broadly than
19 that prescribed by the federal Due Process Clause. "Simply stated, the rule is that the prosecution
20 *must* turn over to the defendant *full* information regarding *any* exculpatory evidence it possesses
21 unless the defendant actually has knowledge of such evidence." *State v. Jones*, 120 Ariz. 556,
22 560 (1978) (emphasis added). "As a caveat to prosecutors," the Arizona Supreme Court has
23 instructed, "if you are in doubt as to whether or not a defendant knows of certain exculpatory
24 evidence already known to the state, reveal it." *Id.* The State breached that duty here.⁵

25
26 ⁴ The good or bad faith of the prosecutor is irrelevant to whether a violation has occurred. *Id.* at 432.

27 ⁵ "By requiring the prosecutor to assist the defense in making its case, the *Brady* rule represents a limited
28 departure from a pure adversary model." *Bagley*, 472 U.S. at 675. This departure is warranted, the
Supreme Court has explained, because "the prosecutor's role transcends that of an adversary: he 'is the
representative not of an ordinary party to a controversy, but of a sovereignty ... whose interest ... in a

1 2. **Haddow's report is "favorable to the accused."**

2 For a Due Process violation to occur, the evidence must be favorable to the accused,
3 meaning it is "exculpatory or impeaching." *E.g., Strickler v. Greene*, 527 U.S. 263, 281–82
4 (1999). Here, there is no question but that the evidence is favorable to Mr. Ray. It is exculpatory
5 on its face. As an initial matter, the report undermines the quality of the police investigation in
6 this case. *See Kyles*, 514 U.S. at 447 (using the suppressed evidence, "the defense could have laid
7 the foundation for a vigorous argument that the police had been guilty of negligence"); *Bowen v.*
8 *Maryland*, 799 F.3d 593 (10th Cir. 1986) ("A common trial tactic of defense lawyers is to
9 discredit the caliber of the investigation or the decision to charge the defendant, and we may
10 consider such use in assessing a possible *Brady* violation.").

11 And the report's import goes much further. Haddow identifies a possible cause of death,
12 carbon dioxide, different from the heat stroke the State has alleged throughout trial. Perhaps even
13 more importantly, Haddow's report implicates a different culpable party. All of the design
14 defects the expert identifies—an off-center rock pit, insufficient air circulation, the creation of an
15 air-tight structure—were the result of actions by Angel Valley, not JRI or Mr. Ray. The report
16 supports an obvious argument that regardless of any actions or omissions by Mr. Ray, design
17 defects in the lodge were the proximate cause of the decedents' deaths. There is no more
18 exculpatory evidence than this: evidence that indicates that the criminal defendant is not
19 criminally responsible for the crime charged.

20 3. **The suppressed evidence is material.**

21 Haddow's report is not only exculpatory, but highly material. The State's suppression has
22 substantially prejudiced Mr. Ray's preparation for trial and presentation of evidence. *See, e.g.,*
23 *United States v. Baxter*, 492 F.2d 150 (9th Cir. 1972) ("Whether the delay in turning over
24 requested favorable evidence amounts to an unconstitutional suppression of it depends upon
25 whether the delay in disclosure substantially prejudiced defendants in the preparation of their
26 defense."). It is well-established that disclosure must be timed so as to assure the defense an
27 criminal prosecution is not that it shall win a case, but that justice shall be done.'" *Id.* (quoting *Berger v.*
28 *United States*, 295 U.S. 78, 88 (1935)).

1 appropriate opportunity to use the evidence disclosed. When a disclosure providing a new lead
2 “is first made on the eve of trial, or when trial is underway, the opportunity to use it may be
3 impaired.” *Leka*, 257 F.3d at 101. Indeed, courts acknowledge “how difficult it can be to
4 assimilate new information, however favorable, when a trial already has been prepared on the
5 basis of the best opportunities and choices then available.” *Id.* This is true for numerous reasons:
6 “[t]he defense may be unable to divert resources from other initiatives and obligations that are or
7 may seem more pressing”; “the defense may be unable to assimilate the information into its
8 case”; and “new witnesses or developments tend to throw existing strategies and preparation into
9 disarray.” *Id.* Although not *every* mid-trial disclosure violates Due Process, there are “many
10 circumstances in which the belated revelation of *Brady* material might meaningfully alter a
11 defendant’s choices before and during trial: how to apportion time and resources to various
12 theories when investigating the case, whether the defendant should testify, whether to focus the
13 jury’s attention on this or that defense, and so on.” *United States v. Burke*, 571 F.3d 1048, 1054
14 (10th Cir. 2009). “*To force the defendant to bear these costs without recourse would offend the*
15 *notion of fair trial that underlies the Brady principle.*” *Id.* (emphasis added).

16 Haddow’s report—and its suppression—are indisputably material. As this Court knows,
17 there are two critical issues in Mr. Ray’s trial: knowledge and causation. The State has deprived
18 Mr. Ray of the opportunity to mount a powerful defense on both of these elements by suppressing
19 Haddow’s opinion until eight weeks into trial. The State’s position is that the sweat lodge itself
20 could not have caused the deaths, and that it is only Mr. Ray’s actions that could be the cause.
21 Yet based on Mr. Haddow’s opinion, Mr. Ray could have mounted a defense that the sweat
22 lodge’s design and construction contributed to the physical cause of death. And Haddow’s
23 opinion is additional evidence supporting Mr. Ray’s defense that the cause of death investigation
24 was severely flawed because the State consistently deprived the medical examiners of critical
25 information regarding other potential causes. In addition, Mr. Ray could have made a powerful
26 case to the jury that, in light of the unknowable defects in the design and construction of the sweat
27 lodge, neither he nor any reasonable person could possibly have foreseen a substantial risk of
28 death.

1 Indeed, Haddow's report is even more material than the evidence at issue in other cases
2 where convictions were reversed due to the belated revelation of a *Brady* violation. In *Leka*, for
3 example, the State failed to disclose the identity of a third eye-witness until three business days
4 before trial, and did not then disclose the substance of his testimony. Although the Defense had
5 an opportunity to interview the witness at that time, and "bungled" it, the court nevertheless held
6 that the State's disclosure was still "too little, too late" to satisfy *Brady*. *Id.* at 100, 101. "[O]nce
7 trial comes," the court explained, "*the prosecution may not assume that the defense is still in the*
8 *investigatory mode.*" *Id.* (emphasis added). Because the testimony would have "rendered
9 untenable" one of the two eyewitness identifications, and "cast doubt" on the second, and because
10 disclosure came "on the eve of trial," Due Process was violated. *Id.* Indeed, the violation of
11 federal law arising from this suppressed evidence was so clear that the Second Circuit awarded
12 relief on *habeas* review, notwithstanding the exceedingly demanding standard of review set forth
13 in the federal habeas statute—requiring not just error in the trial court's decision, but an error that
14 constitutes an objectively unreasonable application of clearly established federal law. *See id.* at
15 107.⁶

16 Similarly, in *Idaho v. McCoy*, 100 Idaho 753, 759 (1980), the Idaho Supreme Court found
17 that the State's mid-trial disclosure of an exculpatory document violated the defendant's
18 constitutional right to a fair trial. Although the document "was not obviously exculpatory on its
19 face," it suggested that records in the county clerk's office—from which the defendant was
20 accused of embezzling funds—were not immaculately kept, and thus "possibly could have been
21 used to shift responsibility for the missing funds away from [the defendant]." Had he been aware
22 of the document's contents earlier, and "had he had a full opportunity to investigate these other
23 irregularities concerning the handling of money," the defendant "may have been able to develop a

24 ⁶ The cases in which mid-trial disclosures have *not* been found to violate Due Process involve
25 circumstances very different from those present here. In some cases, evidence could not have been
26 discovered earlier, and thus there was no suppression at all. In other cases, the evidence is straightforward
27 impeachment material, requiring no further action or investigation by the Defense, such that it can be used
28 fully even during trial. *See Burke*, 571 F.3d at 1056 (defendant had not articulated a basis for prejudice
where impeachment evidence was disclosed in time to impeach the witness on the stand). Here, in
contrast, the expert report suggests a distinct defense and the need for fulsome investigation of a new
topic.

1 defense which would have created a reasonable doubt in the minds of the jurors.” *Id.*

2 Accordingly, the defendant’s conviction was reversed.⁷

3 In contrast to the undisclosed document in *McCoy*, Haddow’s report here *is* exculpatory
4 on its face. And unlike in *Leka*, the State has made disclosure here eight weeks *into* trial, not
5 three days before. If a violation was found in those cases (including, in *Leka*, under a deferential
6 *habeas* standard), then there can be no doubt that a violation also exists here. Moreover, several
7 aggravating factors present in this case make the materiality of the suppressed evidence
8 particularly clear-cut.

9 First, the Haddow report’s materiality is all the more obvious, and the State’s suppression
10 more egregious, because the State has deprived Mr. Ray of other means by which to assess the
11 defective nature of the sweat lodge structure. The State allowed the sweat lodge to be destroyed
12 less than 48 hours after the incident—an action that *in itself* raises a serious due process question.
13 *See generally Arizona v. Youngblood*, 488 U.S. 51, 58 (1988) (Due Process clause may be
14 violated by law enforcement’s bad-faith failure to preserve potentially exculpatory evidence); *see*
15 *also State v. Willits*, 96 Ariz. 184 (Ariz. 1964) (where state has failed to preserve evidence and
16 prejudice has ensued, defendant is entitled to instruction that jury may draw inference against the
17 State, which may itself establish reasonable doubt). At a bare minimum, the fact that Haddow’s
18 report provided the Defense’s only real window into air quality, circulation, and radiation
19 dynamics inside the sweat lodge assures its materiality in the *Brady* inquiry.

20 Second, as the Supreme Court has noted, evidence is more easily deemed material if it
21 was not disclosed after a specific request. “[A]n incomplete response to a specific request not
22 only deprives the defense of certain evidence, but also has the effect of representing to the
23 defense that the evidence does not exist. In reliance on this misleading representation, the defense
24 might abandon lines of independent investigation, defenses, or trial strategies that it otherwise

25 ⁷ As the *McCoy* opinion demonstrates, it is no answer here that the State might have counterarguments to
26 these potential defenses. The materiality prong asks how the government’s suppression of evidence
27 affects the trial’s fairness; it does not require a showing a different verdict would result in light of the
28 evidence. *See Kyles*, 514 U.S. at 434 (“The question is not whether the defendant would more likely than
not have received a different verdict with the evidence, but whether in its absence he received a fair trial,
understood as a trial resulting in a verdict worthy of confidence.”).

1 would have pursued.” *Bagley*, 473 U.S. at 682-683. Indeed, “the prosecutor’s failure to respond
2 fully to a *Brady* request may impair the adversary process,” and “the more specifically the
3 defense requests certain evidence, thus putting the prosecutor on notice of its value, the more
4 reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist,
5 and to make pretrial and trial decisions on the basis of this assumption.” *Id.* Here, the State’s
6 affirmative but false statement on October 27 that no report had been prepared by Mr. Haddow,
7 the State’s failure to respond to the specific requests for Haddow’s opinions, and its repeated
8 representations that it had disclosed all *Brady* material, led Mr. Ray to reasonably conclude that if
9 Mr. Haddow had reached any opinions regarding the sweat lodge, they were not favorable to the
10 Defense.

11 Finally, case law bears out the common-sense reality that suppression of an exculpatory
12 *expert* report is rarely immaterial, given the ability of expert opinions to influence jurors or to
13 provide leads that would not be apparent to defendants or attorneys lacking the expert’s
14 specialized training. *See, e.g., State v. Vilardi*, 76 N. Y. 2d 67 (1990) (arson defendant entitled to
15 new trial based on State’s failure to disclose expert report indicating that expert had been unable
16 to find evidence of arson during initial inspection); *Benn v. Lambert*, 283 F.3d 1040, 1062 (9th
17 Cir. 2002) (*Brady* violation, even under habeas standard of review, because expert report
18 indicating that fire was accidental would have undermined state’s theory of motive); *Paradis v.*
19 *Arave*, 130 F.3d 385 (9th Cir. 1997) (*Brady* violation where prosecution failed to disclose that
20 medical expert, who testified at trial that victim was killed in a creek, had initially opined that
21 victim was *not* killed in the creek).

22 **B. Mistrial is the only possible remedy.**

23 A mistrial is required at this time. As should go without saying, the prejudice to the
24 defense arising from the State’s suppression is manifest. The fact that an expert retained by the
25 State thought that the deaths were the result of a design defect in the sweat lodge could well have
26 led the defense to recast its case. First, had the defense learned about this exculpatory
27 information when it should have—over eleven months ago—it would have conducted its own
28 investigation and found its own experts on the subject. Second, the Defense’s opening statement

1 could have pointed to this fact as a reason why Mr. Ray could not have been on notice that he was
2 putting the victims at a substantial risk of death. And the Defense could have used Mr. Haddow's
3 report to bolster its claim that the State chose to ignore evidence inconsistent with its theory.

4 Third, during cross examination of the State's witnesses, the defense could have sought
5 information supporting the design defect theory—including information regarding air flow and
6 temperatures in different parts of the sweat lodge. With the medical witnesses in particular, the
7 defense likely would have explored additional areas, such as how environmental factors affect
8 absorption rates of toxins.

9 Moreover, the prejudice suffered as a result of the State's suppression goes beyond Mr.
10 Ray's defense. The suppression has systemically affected the trial. The State has advanced a
11 theory, both to the jury and to the court, that Mr. Ray's allegedly distinctive manner of
12 conducting a sweat lodge ceremony caused the deaths at issue. As noted earlier, the State has
13 been permitted to introduce, *inter alia*, evidence comparing Mr. Ray's ceremony to other
14 ceremonies, and evidence of Mr. Ray's philosophy and teachings, to support this theory. But the
15 Court and jury have been deprived of evidence suggesting that regardless of what Mr. Ray said,
16 did, or believed, unforeseeable defects in the sweat lodge's design or construction caused the
17 deaths. There is no way to wind back time and introduce this possibility into every legal
18 argument, evidentiary ruling, and witness examination. There is, therefore, no way to undo the
19 harm caused by the State's willful suppression.

20 Under these circumstances, as numerous courts have concluded in similar cases, trial
21 cannot proceed. *See, e.g., Jones*, 120 Ariz. at 560 (trial court had declared mistrial and ordered
22 new trial; appellate court dismissed the relevant counts altogether "because of the failure of the
23 county attorney to disclose pursuant to *Brady* and Rule 15.1."); *United States v. Chapman*, 524
24 F.3d 1073, 1077, 1083 (9th Cir. 2008) (district court did not err in declaring mistrial and
25 dismissing indictment after the prosecution admitted that it had failed to meet its obligations to
26 disclose over 650 pages of documents to the defense); *U.S. v. Fitzgerald*, 615 F. Supp. 2d 1156,
27 1160 (S.D. Cal. 2009) (*Brady* violation justified dismissal of the indictment where the
28 government "recklessly disregarded its discovery obligations"); *United States v. Lyons*, 352 F.

1 Supp. 2d 1231, 1251 (M.D. Fla. 2004) (indictment dismissed where the “protracted course of
2 misconduct” associated with the *Brady* violation “caused extraordinary prejudice to [the
3 defendant], exhibited disregard of the Government’s duties, and demonstrated contempt for the
4 court”); *United States v. Koubriti*, 336 F. Supp. 2d 676 (E.D. Mich. 2004) (government’s failure
5 to produce *Brady* material warranted dismissal of terrorism related count; government’s
6 withholding of materials materially misled the Court, the jury, and the defense as to the nature of
7 critical evidence, violating defendants’ due process, confrontation, and fair trial rights); *United*
8 *States v. Dollar*, 25 F. Supp. 2d 1320, 1332 (N.D. Ala. 1998) (government’s failure to comply
9 with the defendants’ discovery request for *Brady* materials warranted dismissal of the indictment,
10 even though the evidence was sufficient to support a conviction, where after having assured the
11 court that it had produced all *Brady* materials, the United States continued to withhold materials
12 which “clearly and directly contradicted the direct testimony of several of its most important
13 witnesses”; the government had violated its constitutional duty to the defendant and its ethical
14 obligation to the court).

15 **IV. CONCLUSION**

16 It is difficult to imagine that the State would dispute that a *Brady* violation has occurred
17 here. There is no defense for the suppression of exculpatory evidence, squarely in the State’s
18 possession, that bears directly and materially on the case’s two critical and contested elements.
19 And there is no imaginable explanation for the State’s suppression of this evidence for *eleven*
20 *months*, extending *eight weeks* into trial, after *four* direct requests from the Defense. The *Brady*
21 violation here is stark—far more so than many cases in which convictions have been reversed,
22 even under more stringent standards of review. The court must grant a mistrial at this time.

1 DATED: April __, 2011

MUNGER, TOLLES & OLSON LLP
BRAD D. BRIAN
LUIS LI
TRUC T. DO
MIRIAM L. SEIFTER

THOMAS K. KELLY

6 By: 

Attorneys for Defendant James Arthur Ray

8 Copy of the foregoing delivered this 11th day
9 of April, 2011, to:

10 Sheila Polk
11 Yavapai County Attorney
12 Prescott, Arizona 86301

13 by 

From: Rick Haddow [mailto:rhaddowpi@earthlink.net]

Sent: Thursday, April 29, 2010 6:49 AM

To: Ross Diskin

Subject: Summary of Environmental conditions experienced by Liz Neuman at the Angel Valley Retreat sweat lodge

Ross,

For your review, I have outlined my preliminary environmental investigation and analysis of the sweat lodge indoor air quality and environmental conditions as experienced by Liz Neuman. My determination of the environmental factors which contributed to her death is based on the following findings:

- The lodge maintained hazardous levels of indoor air temperature worsened by saturated air from the application of water onto the heated rock pit. The high relative humidity allowed the stored energy from the rock pit to enter Liz's lungs heating her core. This high relative humidity and temperature created an environmental condition that would not allow Liz's body the ability to self regulate her internal temperature. The environmental condition existed for Liz to cause a hazardous internal temperature leading to hyperthermia and organ failure.
- A contributing cause of Liz's hyperthermia is based on the rock pit's offset of center, closer to the North West section of the lodge where Liz was positioned in the lodge. The radiant heat energy from the rock pit would make this NW section the hottest in the lodge. The participant's space between the rock pit and the exterior wall would be the smallest inside the lodge.

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4/3/2011

- The NW section in which Liz was positioned experienced hazardous concentrations of carbon dioxide (a condition known as hypercapnia). The NW section of the lodge experienced a radiant heat barrier that would greatly contribute to the section's air stagnation and build up of carbon dioxide. This heat barrier would severely limit Liz's space from being ventilated or affording an air exchange when the door was opened between rounds.
 - Liz's health condition was worsened by the length and exposure to both heat and carbon dioxide. Liz never left the lodge or changed her position inside. Participants James Shore and Kirby Brown experienced these same environmental conditions and died. Those other participants who experienced severe illness and hospitalization were also in the same general area as Liz.
 - Both hyperthermia and hypercapnia will cause and multiply the adverse effects to the body's ability to self regulate the gaseous components of the blood chemistry, leading to a chemical blood imbalance causing internal organ failure.
 - The lodge construction created a nearly air tight structure. The rock pit radiant heat would create positive pressure inside the lodge. This positive pressure would lessen the lodge's ability to exchange inside air to outside ambient air. The lodge door opening would have a small air exchange and heat loss in the area of the door. This heat loss would lessen the participant's exposure to the environmental conditions. Thus, for those participants located between the rock pit and the door, environmental conditions would have differed greatly from those experienced by Liz located between the rock pit and the exterior wall.
 - Environmental health effects are based on pollutant concentration, temperature and exposure. For those participants moving from one section of the lodge to another or leaving the lodge all together between rounds, the accumulated effect to their blood chemistry would again, greatly differ from that of Liz and those participants located in her section of the sweat lodge.
 - The environmental conditions and exposure length would most certainly impair cognitive function, thereby rendering Liz incapable of reasoning or making sound judgments that would have enabled her to make the decision to remove herself from the lodge for self preservation.
- If you or others require additional information please do not hesitate to contact me.

Respectfully,

Rick Haddow
Haddow Environmental Research Organization
AZ DPS Business license 1003813
602-980-5034
RHaddowPI@earthlink.net
Fax 480-759-5009

008063

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Sheila Polk, SBN 007514
County Attorney
2 ycao@co.yavapai.az.us

3 Attorneys for the STATE OF ARIZONA

4 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

5 IN AND FOR THE COUNTY OF YAVAPAI

6 STATE OF ARIZONA,

7 Plaintiff,

8 v.

9 JAMES ARTHUR RAY,

10 Defendant.

CAUSE NO. V1300CR201080049

Division PTB

**FIFTEENTH SUPPLEMENTAL
DISCLOSURE BY STATE OF MATTERS
RELATING TO GUILT, INNOCENCE,
OR PUNISHMENT**

11 Pursuant to Rule 15.1(a) and (b) of the Arizona Rules of Criminal Procedure, the
12 Yavapai County Attorney's Office hereby files the following material and information within
13 its possession or control relative to guilt, innocence, or punishment, and further notifies the
14 defendant(s) that said material and information is either typed on this form, is attached hereto
15 and incorporated herein by reference (**) or is available to the defendant(s) for examination
16 and reproduction at the office of the Yavapai County Attorney (****) or has been previously
17 provided to defendant (**), or to be disclosed upon receipt (****)

18 1. The names and addresses of all persons whom the prosecution will call as
19 witnesses in the case-in chief and or rebuttal, together with their relevant written or recorded
20 statements:

21 NAME	22 ADDRESS	23 STATEMENT
---------	------------	--------------

PRIOR SWEAT LODGE OR SEMINAR PARTICIPANTS

24 (1) Paula Aletto (2008 Spiritual Warrior)

**

JRI STAFF (CURRENT AND PRIOR)

25 (2) Amy Hall

Letter disclosed in
Twelfth Supplemental
Disclosure at
Bates No. 5230

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

2. All statements of the defendant and of any person who will be tried with him:

3. All then existing original and supplemental reports prepared by a law enforcement agency in connection with the particular crime with which the defendant is charged.

YCSO DR 09-040205 Supplements 163-165, Bates No. 5422-5504

4. The names and addresses of experts who have personally examined the defendant's or any evidence in this case, together with the results of physical examinations and of scientific tests, experiments of comparisons, including all written reports or statements made by them in connection with this case:

Name	ADDRESS	STATEMENT OR REPORT
Richard Haddow	6303 E. Windsong St. Apache Junction, AZ 85119	May testify as to air quality and environment within sweat Lodge. No report prepared in this Case. Curriculum Vitae at Bates No. 5507-5509

5. A list of all papers, documents, photographs or tangible objects which the prosecution will use at trial or which were obtained from or purportedly belong to the defendant(s):

	Item	Comments/Bates No.	Status
(a)	DSS recording of Follow-up Interview of Barbara Waters	N/A	**
(b)	DSS recording of Interview of Paula Aletto	N/A	**
(c)	E-mail received from Prescott E-News re: comment posted an article	5510-5512	**

6. A list of all prior felony convictions of the defendant which the prosecution will use at trial:

7. A list of all prior acts of the defendant(s) which the prosecution will use to prove motive, intent, or knowledge or otherwise use at trial:

8. All material or information which tends to mitigate or negate the defendant's guilt as to the offense charged or which would tend to reduce his punishment, including all prior felony convictions or witnesses whom the prosecution expects to call at trial:

9. The results of any electronic surveillance of any conversations to which the defendant was a party, or of his business or residence:

10. All search warrants that have been executed in connection with this case:

Office of the Yavapai County Attorney
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Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 11. The identity of any informant(s) involved in this case (if the defendant is
2 entitled to know this fact under Rule 15.4(b) (2).

3 12. Other:

4 (a) Fee Agreement for Steven Pace dated October 19, 2010, Bates No. 005505-
5 005506)

6 DATED this 27 th day of October, 2010.

7 SHEILA SULLIVAN POLK
8 YAVAPAI COUNTY ATTORNEY

9 Sheila Spolk
10

11 COPY of the foregoing mailed
12 October 27th, 2010 to:

13 Thomas Kelly

14
15 By: Kathy Dusen
16
17
18
19
20
21
22
23
24
25
26

MUNGER, TOLLES & OLSON LLP

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November 18, 2010

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RONALD L. OLSON
RICHARD S. VOLPERT
DENNIS C. BROWN
ROBERT E. DENHAM
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DAVE H. WILLIAMS
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JUDITH Y. NITANO
KRISTIN LINDSEY KYLES
MARC T. DOWSEY
JEROME C. ROTH
STEPHEN D. ROSE
GARY T. VINCENT
TED DANE
STUART N. SENATOR
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J. MARTIN WILLIAMS
RICHARD ST. JOHN
ROBT K. SINGLA
LUS LI
CAROLYN HOECKER LUEDTKE
C. BRAD LEE
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GRANT A. BARTIS-DEHRY
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RICHARD D. EISENHADE
ALLISON S. STON
PETER R. TAFT
SUSAN E. NASH
TRUC T. DO
OF COUNSEL
E. LEROY TOLLES
1988-2008

A PROFESSIONAL CORPORATION

VIA EMAIL

Sheila Polk
Yavapai County Attorney's Office
255 East Gurley Street
Prescott, Arizona 86301

Re: State v. James Arthur Ray

Dear Sheila:

We would like to interview the following witnesses designated by the State for trial as soon as is convenient for all parties:

1. Paula Aletto
2. Linda Andresano
3. Sandra Andretti
4. Dr. Jeanne Armstrong
5. Michael Barber
6. Scott Barratt
7. Aaron Bennett
8. Kristina Bivens
9. Shawna Bowen
10. Kim Brinkley
11. Robbie Brooks-Moore
12. Julie Bunker
13. Beverly Bunn
14. Taylor Butler
15. Lou Caci
16. Gabriela Casineanu

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(213) 683-5154 FAX
Truc Do@mto.com

Sheila Polk

November 18, 2010

Page 2

17. Elaine Cerro
18. Sylvia De La Paz
19. Melanie Dodaro
20. David Duhaime
21. Bruce Duncan
22. John Ebert
23. Tammy Eshelman
24. Brian Essad
25. Fawn Foster
26. Josh Frederickson
27. Megan Frederickson
28. Larry Gaither
29. Patty Gaither
30. Laura Gennari
31. Tere Gingerella
32. Dawn Gordon
33. Michelle Goulet
34. Robert Grain
35. Teresa Grain
36. Danielle Grandquist
37. Ami Grimes
38. Else Hafstad
39. Jennifer Haley
40. Shawn Hank
41. Greg Hartle
42. Christine Hsiao
43. Amanda Huffnang
44. Susan Isaacs
45. Matthew James
46. Christine Jobe
47. Nikki Khosla
48. Daniella Kowprowski
49. Bill Leversee
50. Cynthia Manner
51. Christine Mattern
52. Melinda Martin
53. Dr. Sohelya Marzvaan
54. Simaan Marzvaan
55. Sara Mercer
56. James Medicine Tree
57. Dennis Mehravar
58. Brent Mekosh
59. Hope Miller

Sheila Polk

November 18, 2010

Page 3

60. Julie Min
61. David Morton
62. Marilyn Moss
63. Susan Naves
64. Carl Nelson
65. Louise Nelson
66. Patrick O'Brian
67. Danita Oleson
68. Michael Oleson
69. Nancy Olgevy
70. Gary Palisch
71. Daniel Pfankuch
72. Michelle Pfankuch
73. Susan Pogash
74. Randall Potter
75. Laura Prieve
76. Melissa Phillips
77. Lee Plentywolf
78. Brandy Rainey-Amstel
79. Stephen Ray
80. Angela Reimma
81. Marta Reis
82. Mickey Reynolds
83. Sean Ronan
84. Lisa Rondan
85. Rosemary Senjem
86. David Singing Bear
87. Susan Smyser
88. Robin Snyder
89. Laura Souter
90. Sidney Spencer
91. Martha Stern
92. Sheryl Stern
93. Sue Ellen Trumfour-Cheney
94. Laura Tucker
95. Linnette Veguilla
96. Lynette Wachterhauser
97. Dr. Nell Wagoner
98. Barbara Waters
99. Tess Wong
100. Richard Wright

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December 7, 2010

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VIA EMAIL AND U.S. MAIL

Sheila Polk
Yavapai County Attorney's Office
255 East Gurley Street
Prescott, Arizona 86301

Re: State v. James Arthur Ray

Dear Sheila:

I am writing to request discovery and interviews of the witnesses the State has designated as experts for trial: Rick Ross, Steven Pace, Richard Haddow, Matthew Dickson, and Douglas Sundling. We ask for priority on these interviews (ahead of the civilian witnesses) and are available December 20-23. Due to the late timing of the State's disclosure of these experts and the approaching December 27 motion cut-off date, Mr. Ray will seek leave of the Court to file any motions necessitated by the interviews after December 27.

Mr. Ray requests the State promptly provide him with "any completed written reports, statements and examinations notes made by [your] experts," Ariz. R. of Crim. P. 15.1(e)(3), and "the results of physical examinations and scientific tests, experiments or comparisons that have been completed," *id.* 15.1(b)(4). We are also requesting the State provide, as it did with Mr. Ross, the dates of when these experts were retained and the remunerations given for their work in this case.

WRITTEN DIRECT LINE
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(213) 683-5154 FAX
Truc.Do@mto.com

MUNGER, TOLLES & OLSON LLP

Sheila Polk

December 7, 2010

Page 2

Thank you in advance for your professional courtesy. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Truc T. Do". The signature is fluid and cursive, with a large loop at the end.

Truc T. Do



Yavapai County Attorney

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SHEILA POLK
Yavapai County Attorney

December 10, 2010

Truc T. Do
Munger, Tolles & Olson L.L.P.
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

*Re: State v. Ray, Request for Discovery and Interviews of State's Expert Witnesses,
Your Letter dated December 7, 2010*

Dear Ms. Do:

I am in receipt of your letter dated December 7, 2010. Below are responses to each item.

Disclosure Request

With respect to your request for the reports and remunerations for each of the State's Expert Witnesses, the State provides the following:

Rick Ross: The State disclosed the CV and Fee Agreement for Rick Ross (Bates No. 5378-53888). We anticipate Mr. Ross will complete his report by the end of December. Upon receipt of his report it will be immediately disclosed.

Steven Pace: The State disclosed the CV and Fee Agreement for Steven Pace (Bates No. 5376-5377; 5505-5506). Although the Fee Agreement was included in the documents provided with the State's 15th Supplemental Disclosure Statement, it was inadvertently omitted from the items described on the Statement. It was redisclosed with the same bates numbers in the State's 22nd Supplement Disclosure Statement to document the earlier disclosure. We anticipate Mr. Pace will complete his report by the end of December. Upon receipt of his report it will be immediately disclosed.

Richard Haddow: The State withdraws Mr. Haddow as a witness in this case.

Matthew Dickson: Dr. Dickson's CV was disclosed at Bates No. 5669. We are currently finalizing the retention and fee agreement. We anticipate Dr. Dickson will complete his report by the end of December. Upon receipt, both the signed Fee Agreement and his report will be promptly disclosed.

*Truc Do
December 10, 2010
Page Two*

Douglas Sundling: Mr. Sundling was disclosed to provide timely notice that the State is considering retaining him as an expert witness. The State does not have an agreement with Mr. Sundling at this time. Should an agreement be reached, the Fee Agreement and any report prepared for Mr. Sundling will be promptly disclosed.

Interview Requests (Expert Witnesses)

As indicated above, the State anticipates that our experts will have their reports completed by the end of December. We will work with you to schedule the interviews of our experts in January when you will have the benefit of their reports. As soon as possible, please provide Penny Cramer, my assistant, with multiple dates in January of your availability for the interviews of the experts and indicate whether you want to conduct the interviews telephonically or in person. As you know, the schedules of professionals fill up quickly.

Interview Request (Civilian Witnesses)

Based on your previous request, we have scheduled the following interviews:

Date: December 16, 2010
Location: Thousand Oaks Police Department Conference Room
2101 E. Olsen Road
Thousand Oaks, CA 91360

Schedule: 9:00 a.m. Jennifer Haley
11:00 a.m. Sheryl Stern (tentative – awaiting confirmation)

Date: December 21, 2010
Location: San Diego Police Department, Northeastern Division
13396 Salmon River Road
San Diego, CA 92129

Schedule: 9:00 a.m. Tere Gingerella
11:00 a.m. John De Martino
1:00 p.m. Stephen Ray (tentative – awaiting confirmation)
3:00 p.m. Kim Brinkley (tentative – awaiting confirmation)

Truc Do
December 10, 2010
Page Three

We were unable to schedule the following witnesses as requested:

Bobby Brooks-Moore: Ms. Brooks-Moore has moved and now lives in Nashville, Tennessee. Her new address is 912 Gold Hill Court, Franklin, TN 37069. Please indicate whether you wish to interview her in person there.

Melanie Dodaro: Ms. Dodaro resides in Canada at 627 Denali Drive, Kelowna, BC V1V2P5. In your letter dated November 30, 2010, you mistakenly listed her as a resident of Arizona. Please indicate whether you wish to interview her in person.

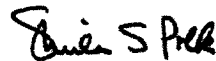
Lisa Rondan, Brent Mekosh and Lynette Wachterhauser are not available until January 2011.

Extending the Motion Deadline

The State understands your concern that the motion deadline of December 27, 2010 may need to be extended to allow motions concerning issues learned after the deadline. Indeed, the State has twice raised this same concern with the court and you as we have not received any information relating to your trial expert, Dr. Ian Paul. You may recall that when the State expressed this concern, the Court indicated it understood that there may be issues that arise after the deadline that will need to be addressed. Accordingly, the State will not object to your request to extend the motion deadline.

If you have any questions or need anything further, please do not hesitate to contact me.

Very truly yours,



Sheila Sullivan Polk
Yavapai County Attorney

MUNGER, TOLLES & OLSON LLP

355 SOUTH GRAND AVENUE
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February 4, 2011

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ALAN V. FRIEDMAN
RONALD L. OLSON
RICHARD S. VOLPERT
DENNIS C. BROWN
ROBERT E. DEHNAN
JEFFREY I. WEINBERGER
CARY B. LERMAN
CHARLES D. SEGAL
RONALD S. WEYER
GREGORY P. STONE
BRAD D. BRIAN
BRADLEY S. PHILLIPS
GEORGE M. GARVEY
WILLIAM D. TERNIO
STEVEN L. GUNSKI
ROBERT D. KRAUSS
STEPHEN R. BURSTOVICH
JOHN W. SPIEGEL
TERRY E. SANCHEZ
STEVEN M. PERDY
MARK S. HELM
JOSEPH D. LEE
MICHAEL R. DOYEN
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GREGORY B. PHILLIPS
LAWRENCE C. BARTH
KATHLEEN M. HODOWELL
GLENN D. FOMENKANTZ
THOMAS B. WALPER
RONALD C. HAUSSMAN
PATRICK J. CAFFERTY, JR.
JAY M. FUJITANI
O'MALLEY M. MILLER
SANDRA A. SEVILLE-JONES
MARK H. EPSTEIN
HENRY WEISSMAN
KEVIN S. ALLRED
BART H. WILLIAMS
JEFFREY A. HEWITT
JUDITH T. KUTANO
KRISTIN LINSLEY MYLES
MARC T. GROSSKY
JEROME C. BORN
STEPHEN D. ROSE
GARTH T. VINCENT
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STUART A. SENATOR
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DANIEL P. COLLINS
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MARTIN ANN TODD
MICHAEL J. O'SULLIVAN
KELLY M. KLAUS
DAVID S. GOLDMAN
BRYAN A. GROSS
KEVIN S. HADJIOA
HOJONG HWANG
KRISTIN S. ESCALANTE
DAVID C. DWIVELLI
ANDREA WEISS JEFFRIES
PETER A. BETRE
PAUL J. WATFORD
DANNA S. TRESSER
CARL M. MOOR
DAVID H. ROSENBERG
DAVID H. FRY
LISA J. DICKERT
MALCOLM A. HEINICKE
GREGORY J. WEINBERG
TAMERLIN J. GODLEY
JAMES C. RUTTEN
J. MARTIN WHITE
RICHARD ST. JOHN
BOHAT K. SINGLA
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BRIET J. RODA
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JENNY M. JIANG
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M. LANCE JASPER
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KIM R. LANTON
PETER C. REHN
RACHEL L. STERN
AMI BRACK
PUNEET K. SANDHU
IAN J. MILLER
MARTHA A. TORRES
DAVID S. HAN
DAVID C. LACHMAN
JENNY M. HONG
GUY A. RUS
AARON BELM LOWENSTEIN
DANIEL H. ELEGWOOD
LAURA B. SHOLOVE
NELISSA CAMACHO-CHEUNG
SARALA V. HADJALA
JUSTIN L. HANSEN
LEO GOLDBERG
KIMBERLY A. MORRIS
MATTHEW A. MACDONALD
CAROLYN V. ZABOYCH
ERIC S. HENRYCH
ERIN E. SCHANNING
MARGARET G. JEGLER
ESTHER H. SUNG

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860-90081

VIA EMAIL

Sheila Polk
Bill Hughes
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Prescott, Arizona 86301

WRITER'S DIRECT LINE
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(213) 683-5154 FAX
Truc.Do@mto.com

Re: State v. James Arthur Ray

Dear Sheila and Bill:

I am writing in response to your letters dated February 2 and February 3, 2011 regarding outstanding disclosure issues. Since trial is fast approaching, we would appreciate resolving these disclosure issues with the State as soon as possible.

Defense Request for Brady Information on Rick Ross

In response to our January 26, 2011 request for *Brady* information on Rick Ross, the State wrote that it "has no information beyond what the defense attorneys learned in the interview" of Mr. Ross on January 21. Would you please clarify this statement? Is the State saying that it had no knowledge of Mr. Ross's unlawful and violent "cult deprogramming" activities *prior* to the defense interview?

If not, and the State was in possession of this *Brady* information before January 21, we are requesting full disclosure, including without limitations Mr. Ross's own statements to the State about his unlawful and violent deprogramming activities and the dates of those statements. The mere fact that the defense discovered *some* of this exculpatory information by other means does not relieve the State of its affirmative and constitutional duty to provide *Brady* disclosure. We are happy to consider any authority you have to the contrary.

Statements of Defense Witnesses

We will be filing an Amended Witness List in response to the State's witness list filed on January 31, 2011 and will promptly determine our disclosure obligations.

You asked for statements obtained by the defense of the State's witnesses. To the extent there are any, we are not required under Rule 15.2 to disclose statements taken of the State's witnesses. *See Osborne v. Superior Court (Pinal County)*, 157 Ariz. 2 (1988). Please let us know if you have any authority to the contrary.

Defense Request for Disclosure of Items Noticed in the State's Exhibits List

The State identified the following as exhibits for trial. We have not received any disclosure of these items and request that they be provided promptly.

- DVD of Aerial Footage of Angel Valley Spiritual Retreat Center
- October 2009 Calendar. We are uncertain whether this is simply a blank calendar or specific to this case.
- Spiritual Warrior Timeline of Events
- Diagram of Sweat Lodge with participants' names. With regard this item, we also ask that you provide the name of the person who prepared the diagram, when it was prepared, and what information/materials were relied upon for its preparation.
- Angel Valley Map of Area
- Summary of Sedona weather conditions on October 8, 2009 from Yavapai County Flood Control
- Dream Team Expectations for Spiritual Warrior
- Spiritual Warrior Participant Guide
- Photograph of Kirby Brown
- Photograph of Lizbeth Neuman
- Photograph of James Shore

Stipulations to the State's Exhibits

We will stipulate to the admission of all JRI and Angel Valley Waivers signed by the participants of the 2009 Spiritual Warrior Retreat ("SPW"), on the condition that the State introduces the waivers of all participants—whether testifying or not.

We will stipulate to the foundation of all medical records, including EMT, Fire Department, and hospital records, of all 2009 SPW participants transported and treated on October 8, 2009, on the condition that the State introduces all medical records of all such participants—whether testifying or not.

Sheila Polk
February 4, 2011
Page 3

If these stipulations are agreeable to the State, we would like to confirm the bates stamp numbers of the documents to be included in the stipulation. Would you please provide us with draft stipulations, including our previous agreement to chain of custody on the decedents' bodies.

Questions Regarding the State's Exhibits

The State has listed Dr. Francis O'Connor's IME reports on Sidney Spencer and Dennis Mehravar among its exhibits for trial. As you know, I asked on December 27, 2010 whether the State intended to use these reports in its case and requested additional disclosures in connection with these reports. On January 3, 2011, the State wrote "[t]he State does not intend to use the Independent Medical Reports by Dr. Francis O'Connor in its case-in-chief" and, for that reason, did not provide the requested additional disclosure. We would appreciate prompt clarification on the State's inconsistent positions.

Given the Court's ruling excluding alleged 404(b) acts from prior sweat lodge events, will the State be withdrawing the following exhibits?

- David Duhaime's JRI Client File
- Daniel Pfankuch's Medical Records
- David and Michelle Pfankuch's JRI Client File
- Mickey Reynolds' JRI Client File
- Nancy Olgivie's JRI Client File
- Paula Aletto's JRI Client File
- Julia Bunker's JRI File
- Julia Bunker's notes from Spiritual Warrior 2008
- Danielle & John Kowprowski's JRI Client File
- Cynthia Manner's JRI Client File
- Sheryl Stern's JRI Client File

The State also listed the "JRI Client File(s)" for 2009 SPW participants. These files contain information and evidence that would be irrelevant and inadmissible per the Court's order excluding evidence of Mr. Ray's and JRI business practices and financial condition. Does the State intend to introduce the entire files for these 2009 SPW participants, or only those pages relevant to the cost of attending the 2009 retreat?

The State has also listed reports and notes that are inadmissible hearsay, including for example the reports by Mr. Ross, Mr. Pace, and Dr. Dickson and the notes of Melissa Phillips. Is it the State's intention to move such items into evidence, or simply to mark them for identification without publication to the jury and/or moving for their admission into evidence?

Sheila Polk

February 4, 2011

Page 4

Please provide prompt clarification regarding these items so that we can determine whether to file objections to any of the State's exhibits.

Defense Transcriptions of State's Interviews

On January 20, I offered to provide the State with copies of the defense's transcriptions of the State's interviews of its witnesses in order for the parties to have an accurate record of the witnesses' statements *at trial*. It was our intention to mark these transcripts as exhibits and for use by either party at trial, subject to the appropriate foundation of refreshing a witness's recollection or impeaching his/her testimony. We were interested only in having an accurate record of the witness statements should either events occur at trial and were not asking the State to stipulate to their introduction into evidence without the proper foundation.

The State, however, indicated in its January 21 letter that it "will not agree to the use or admission of any transcripts at trial for any purpose." Given the State's position, we do not see the need to provide the State with copies of the defense's transcriptions prior to trial. Please let us know if you change your position.

State's Request for Disclosure re Dr. Paul

I received Bill's letter dated January 25 regarding the State's request for disclosure of a number of items regarding the defense's retention of Dr. Paul and I responded to Bill on January 26. As I stated in my letter of January 26, the State's requests for defense expert disclosure is inconsistent with its positions regarding the scope of the State's expert disclosures. I asked the State to let us know if the State is now taking a different position in requesting disclosure of items it has previously objected to, in Bill's letter of January 25. We did not receive an answer.

For example, in its Motion for Protective Order Re: State's Notes From Interviews, the State argued that:

"Under criminal case disclosure procedures, the State receives a report (essentially a "statement") from a defendant's expert, along with a summary of the materials he examined in reaching whatever conclusion. If the expert does not provide a report, the State is provided notice of the information reviewed by the expert in preparing to testify. The State is then provided an opportunity to interview the defendant's expert to prepare for trial. This is the normal disclosure practice in a criminal case and *notes from the expert's discussions with the defendant or his attorneys are not included.*"

Sheila Polk

February 4, 2011

Page 5

State's Motion at 6:1-8 (emphasis added). The State reiterated this position a number of times to deny defense requests for disclosure of its experts that went beyond a final, written report and interview. Yet in Bill's letter of January 25, the State is now requesting "any and all written communications and emails between [myself] (or any other defense attorneys or staff) and Dr. Paul pertaining to this case" and "any calendars or other notes by Dr. Paul made pertaining to this case." Is the State changing its position regarding the scope of the parties' expert disclosure obligations and now believe that notes from the expert's discussions with attorneys are included?

On October 18, 2010, I requested all notes made by Mr. Ross and, after the State noticed additional experts for trial, requested the same disclosures under Ariz. R. of Crim. P. 15.1(b)(4) for Steven Pace, Dr. Dickson, and Douglas Sundling on January 9, 2011. *To date, we have not received any notes by any of the State's experts, nor even an acknowledgment of my written requests.*

Bill requested Dr. Paul's bill statements and records for his work in this case. As I stated in my letter of January 26 and reiterated on the record during Dr. Paul's interview on January 31, 2011, the defense is ready to provide the State with this disclosure when the State responds to the defense's requests for disclosure of the same. On December 7, 2010, I requested that the State provide disclosure of "the dates of when these experts were retained and the remunerations given for their work in this case."

In its 36th Disclosure, provided just yesterday and nearly 60 days after the defense request, the State finally provided evidence of remunerations for its experts' work. Based on the State's own disclosures, the State was clearly in possession of the information sought—at the time of the defense's request or soon thereafter—but failed to make timely disclosure. I noted that:

- Steve Pace sent billing statements to the State dated December 14, 2010 and January 3, 5, 6, 19, and 24.
- The State paid Mr. Ross \$2500 by Yavapai County Requisition No. 119598 on September 15, 2010 and another \$2567 by Yavapai County Requisition No. 124465 on January 31, 2011.
- The State paid Dr. Dickson \$2000 on December 8, 2010 by Yavapai County Requisition No. 121472.

We do not understand the State's delay or noncompliance with the defense's requests, but Ariz. R. of Crim. P. 15.7(c) provides that "[i]f a party fails to comply with ... Rule 15.2 the other party is not required to make any further disclosure except material or information which tends to mitigate or negate the defendant's guilt as to the offense charged." The defense is ready to provide any disclosure permitted under Rule 15.2 when the State provides reciprocal disclosure.

Sheila Polk

February 4, 2011

Page 6

We will be providing the State with the Defendant's Fourth Supplemental Disclosure Statement, which will contain the following: (1) correspondence to Dr. Paul regarding materials provided to him for his review; (2) Dr. Paul's Fee Schedule and billing statements to date; (3) Fee Agreement; and (4) articles or literature provided by Dr. Paul.

Defense Request for Disclosure re Richard Haddow

I understand the State is not calling Mr. Haddow. However, as the Court noted in its Order of December 1, 2010, "the State's obligation under Rule 15.1(b)(4) applies to all experts, regardless of whether or not the State intends to call the expert at trial, and arises once the expert has examined the defendant or considered any evidence in the particular case." Please promptly provide the required disclosures for Mr. Haddow under Rule 15.1.

Defense Request for Disclosures re State's Experts

In your letter of January 7, 2011, the State indicated that it had provided Rick Ross, Douglas Sundling, Dr. Dickson with various materials for review. Please provide us with any and all correspondence to your experts requesting work on this case and/or providing any and all materials to be reviewed, and all correspondence from the experts to the State—whether testifying or not. See Ariz. R. of Crim. P. 15.4(b)(4) and Court's Order of December 1, 2010. We include Richard Haddow in this request.

Defense Request for Disclosure re State's February 3, 2011 Request to AIT Lab

We received in your 36th Disclosure notice that the State has requested additional lab testing on James Shore and Kirby Brown. We would like to know specifically what "specimens" were sent to AIT. We also request disclosure regarding Detective Diskin's conversation with Cindy Ross from the Yavapai County Medical Examiner's Office, including without limitations notes by Ms. Ross and Detective Diskin.

Court-Ordered Disclosure of All Notes Regardless of Author of the State's December 14, 2009 Meeting

On October 20, 2010, the State indicated that it had not received confirmation from Dr. Fischione, Dr. Lyon, and Susan Barbaro as to whether these attendees to the State's December 14, 2009 meeting took notes. Please provide us with all such notes or verify that none exist. I am also requesting that the State provide us with notes from Mr. Hughes and Mr. Sisneros of this meeting, or verify that none exist.

MUNGER, TOLLES & OLSON LLP

Sheila Polk

February 4, 2011

Page 7

Please feel free to contact me if you would like to discuss these matters further or have any questions. Thank you in advance for your professional courtesy and cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Truc T. Do".

Truc T. Do

March 31, 2011

VIA EMAIL

Sheila Polk/Bill Hughes
Yavapai County Attorney's Office
255 East Gurley Street
Prescott, Arizona 86301

WINTER'S SUNSET LINE
(213) 683-9154
(213) 683-5154 FAX
Truc.Do@mto.com

Re: State v. James Arthur Ray

Dear Sheila and Bill:

I am writing to follow up on discovery requests that have remained outstanding for more than 30 days, and to request an interview of Douglas Sundling.

Request for Interview and Disclosure Re: AIT Laboratories

In our letters dated February 22 and 24, we requested an interview of Dr. G. John DiGregorio or the other criminalist who, according to your 40th Disclosure, may testify in his stead on behalf of AIT Labs. We have not received a response from you. We are available in Yavapai County at any time that does not conflict with trial. Please respond as soon as possible with proposed interview times.

Please also provide the other information requested in our letters on this issue:

- all chain of custody information for the blood samples and all related correspondence
- all notes from AIT Laboratories made in connection with this case
- all information regarding the name and type of panels that you requested

Sheila Polk

March 31, 2011

Page 2

- information regarding the conversations between Detective Diskin and Cindy Ross in the Yavapai County Medical Examiner's Office regarding precisely what "specimens" were sent to AIT.

Request for Statements of Richard Haddow

In our letter dated February 4, we requested that you disclose all statements of Richard Haddow in connection with this case, as required by Rule 15.1(b)(4). As you know, Rule 15.1(b)(4) requires the State to disclose the statements of all experts, even those who do not testify at trial. Please disclose Mr. Haddow's statements immediately.

Notes of Bill Hughes and Steve Sisneros of the December 14, 2009 Meeting

I have made several requests for Bill's and Steve's notes of the December 14, 2009 meeting or a statement by your office that there are no items responsive to the Court's order of September 20, 2010 ordering disclosure. Please respond.

Interview of Douglas Sundling

We would like to schedule an interview of Mr. Sundling in Yavapai County prior to his anticipated date of testimony. Please propose a date and time for the interview.

Thank you for your cooperation and courtesy. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Truc T. Do



Yavapai County Attorney

255 East Gurley Street
Prescott, AZ 86301
(928) 771-3344 (Criminal)
(928) 771-3338 (Civil)
Facsimile (928) 771-3110

SHEILA POLK
Yavapai County Attorney

June 10, 2010

VIA EMAIL & US MAIL

Truc T. Do
Munger, Tolles & Olson L.L.P.
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Re: State v. James Arthur Ray, CR 201080049
Your letters dated June 2 and June 4, 2010

Dear Ms. Do:

I am in receipt of your letters dated June 2 and June 4, 2010. Below are responses to each item.

Medical Examiners

I accept your apology for parsing my words. We relayed your request, using your exact words for "all field notes and lab notes," to both Medical Examiner's Offices. We disclosed to you all of the records we received in response. We will verify a second time that all notes relating to the autopsies of the victims contained in either the Coconino County or Yavapai County Medical Examiner's Office have been disclosed.

With respect to the meeting that occurred between the prosecutors and the medical examiners, you state you are entitled to the information because it represents "facts and evidence collected from the medical examiners regarding cause of death" and may constitute *Brady* material. Please rest assured all of the evidence in this case has been disclosed to you in compliance with Rule 15.1, Ariz. R. Crim. P. We have fully complied with our *Brady* obligation and will continue to do so. Your suggestion that you are entitled to our work product to satisfy your suspicion that we are not complying with *Brady* is simply unfounded.

State's Physical Evidence

We appreciate your willingness to extend the time period for the disclosure of this evidence. We anticipate that the majority of the evidence requested, including items 66 and 48, will be disclosed within the time limit set forth in the criminal rules and, in fact, hope to provide most of the items to you prior to your interviews next week.

Additional Interviews

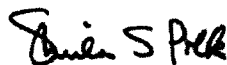
I believe your concerns regarding the scheduling of interviews were addressed in my e-mail of June 3, 2010.

Possible Evidentiary Issues

With respect to your letter dated June 4, 2010 relating to possible evidentiary issues, I will be meeting with the prosecution team to review the issues raised and will respond shortly thereafter. I appreciate your interest in addressing these issues as soon as possible and will make every effort to do so. However, without the benefit of your client's defenses and disclosure, it is difficult for us to identify what information and events are relevant. The sooner the defense complies with your disclosure obligations pursuant to Rule 15.2 of the Arizona Rules of Criminal Procedure, the sooner we will be able to identify evidentiary issues.

If you have any questions relating to the above, you may contact my paralegal, Kathy Durrer via e-mail at kathy.durrer@co.yavapai.az.us.

Very truly yours,



Sheila Sullivan Polk
Yavapai County Attorney

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant.)
9 _____

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11
12
13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R. DARROW
16 TRIAL DAY TWENTY
17 MARCH 23, 2011
18 Camp Verde, Arizona

19
20
21
22 COPY

23
24 REPORTED BY
25 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 and attorneys who are prepared to cross-examine.
2 And the rule is as long as we have a
3 good-faith basis to ask a question to impeach the
4 credibility of a witness. That's the rule.

5 Secondly, the reason it's disingenuous is
6 because I know in this county -- I've been on the
7 other side of this coin. State v. Scott Bryan with
8 Dr. Karen Bryce. When a prosecutor from Yavapai
9 County stood up with transcripts of her prior
10 testimony and documents relating to the Great Ghost
11 Investigation Company that she maintained out of
12 Albuquerque, New Mexico, without disclosure,
13 arguing exactly what I'm arguing.

14 And more recently, State v. Eric Bodet,
15 when Mark Ainley, an employee of Ms. Polk, stood up
16 with a complaint filed by my client that I was not
17 aware of, made the identical argument that I'm
18 making today. That's why I believe it's
19 disingenuous.

20 THE COURT: As I said, I never had this arise
21 to this level where we're actually getting to the
22 point of a good-faith basis for a question. The
23 prove up has been provided, and the state's saying,
24 no. You're using this under Rule 15 and
25 improperly. And Mr. Kelly is raising an argument

1 that that's how it's done here.

2 Ms. Polk, what about that? Do you
3 dispute those other instances?

4 MS. POLK: Your Honor, I know nothing of those
5 other instances. I don't know what he's talking
6 about. But I dispute the notion that these rules
7 contemplate trials by surprise.

8 This is a bright-line rule that says the
9 parties provide to each other all papers and all
10 documents you intend to use at trial. That's how I
11 have always practiced, and that's how the state has
12 handled this case.

13 We provided everything we have, and as
14 the Court and defense knows, as we continue to come
15 upon new evidence, we continue to send it over to
16 them very timely.

17 What has happened here today, for
18 example, is Exhibit 786, which is the letter from
19 Dr. Simone, suddenly Mr. Kelly is asking her -- he
20 asked her a question about it. I don't even have
21 the document. He asked her what I believe was a
22 misleading question suggesting that this letter
23 said something that it did not have.

24 The state doesn't have it. I'm not even
25 in a position to make an objection, not knowing

1 what document he's reading from and whether or not
2 he has quoted from it correctly.

3 I go back to Rule 15.2(c), which is very
4 clear. It's a very clear rule. If you're going to
5 use documents, papers, in this trial, provide it to
6 the other side.

7 THE COURT: I think this came up in another
8 context, Mr. Kelly, about the rules and a statement
9 as to how trials may commonly proceed in this
10 jurisdiction. That's one thing. And it's another
11 thing when a person says but here are the rules.

12 So your response was you may think it's
13 disingenuous. But let's talk about the disclosure
14 rule. If a document is going to be used at trial,
15 it has to be disclosed. Let's talk about the rule.
16 Ms. Polk is asserting the rule. And in this trial
17 that's what's going to be addressed.

18 MR. KELLY: Judge, I respectfully submit that
19 entirely guts the rule on cross-examination about a
20 good-faith basis and not proving up the position
21 with extrinsic evidence. Why does that rule even
22 exist?

23 And Judge, there's another important
24 distinction. And it is that my client enjoys
25 rights that the government does not. He's

1 protected by the Constitution. What we're talking
2 about is an age-old principle of trial practice
3 that exceeds far beyond the boundaries of Yavapai
4 County.

5 And I don't -- Mr. Li or Ms. Do, we do
6 not have to disclose our cross-examination outline
7 to the government. And if they're not diligent
8 enough to ask the right question of their witness
9 and prepare her testimony for trial, then why would
10 I assist the State of Arizona in convicting my
11 client?

12 And finally, Judge, they executed a
13 search warrant. They have all the powers that the
14 government enjoys in terms of gathering evidence.
15 And they executed search warrants on his office.
16 And these documents are in there.

17 Judge, I guess what Mr. Li and Ms. Do and
18 I are asking is, is the clear ruling of this Court
19 today that we have to disclose all the materials
20 we're going to use on cross-examination?

21 THE COURT: I don't believe any ruling has
22 been made on this. This last matter was taken care
23 of by stipulation. The exhibits are in by
24 stipulation. So that's what I'm dealing with right
25 now.

<p>1 spoke to. She said officer, and she might have</p> <p>2 spoken to an officer. But we have no record of</p> <p>3 that. I have no record of that in my file and we</p> <p>4 turned over everything we have to the did he</p> <p>5 against. Again Your Honor this is another witness</p> <p>6 that the /TKPEPBS chose not to interview</p> <p>7 THE COURT: If there is another in /T-R view</p> <p>8 out there the defense of course need to know about</p> <p>9 it you would want to know about it as well. I</p> <p>10 would ask that you check.</p> <p>11 MS. POLK: I will double-check Your Honor</p> <p>12 /PLT I'm satisfied that I have everything and that</p> <p>13 we've /TKEUS /KHROESD everything I can tell the</p> <p>14 court I have no information about an interview</p> <p>15 occurring that night. I was asking her to find out</p> <p>16 about the October 26 and she volunteered something</p> <p>17 that night that was new to me.</p> <p>18 MR. KELLY: Judge, I could be Mississippi take</p> <p>19 /EPB and the record will connect. I recall the</p> <p>20 question being you were interviewed twice. And she</p> <p>21 said yes. Then when That night and then the</p> <p>22 later date Ms. Polk said October 26, she said yes</p> <p>23 So from that I implied that the government had</p> <p>24 knowledge and asked the question, you were</p> <p>25 interviewed twice. It wasn't volunteered by the</p>	<p>1 the jury that there is a department report or an</p> <p>2 audio or not on any of this. That would be out of</p> <p>3 the ordinary. There is no reason for it.</p> <p>4 MR. KELLY: Judge if I may respond. Goes to</p> <p>5 the witnesses credibility. If she /-Z is not</p> <p>6 remembering correctly or if she's not telling the</p> <p>7 truth in speaking to a law enforcement officer.</p> <p>8 That speaks to her credibility. Alternatively if</p> <p>9 she is telling the truth then we have a significant</p> <p>10 December closure violation. What we're asking as a</p> <p>11 cure and I suspect, given the detail provided by</p> <p>12 Detective Dialan, that every law enforcement</p> <p>13 officer who spoke to any of the witnesses did</p> <p>14 record that in a police report. So I'm making the</p> <p>15 assumption that her recollection is incorrect and</p> <p>16 thus explaining to the jury through a stipulation</p> <p>17 that wheel find out.</p> <p>18 THE COURT: Wait a minute</p> <p>19 MS. POLK: The parallel to the rescue.</p> <p>20 Apparently there was a department report a D R and</p> <p>21 it's state dated October 8, 2008. It is by</p> <p>22 sergeant Frank Bar /PWRO in there he does /EUPBD</p> <p>23 /KAEU he spoke with farm ask this is on October 8</p> <p>24 at Angel Valley and I can provide a copy to the</p> <p>25 defense. That would be the supplement 37. That's</p>
<p>1 witness. So I think that needs to be ferret /-D</p> <p>2 out.</p> <p>3 Q. Ms. Polk is that what you asked?</p> <p>4 MS. POLK: It is the witness for this</p> <p>5 afternoon is Sara Mercer. She was interviewed</p> <p>6 twice. I was confusing the witness and for the</p> <p>7 witnesses after the Sara Mercer, they were two very</p> <p>8 short /EUP /TER views. Am my mind I as I was going</p> <p>9 it I was confusing /SA are Mercer. All saw I /OPL</p> <p>10 had the October 26. I found out there was a second</p> <p>11 in /T-R view, I'll just avow to the court. I did</p> <p>12 not have knowledge of two enter views and I was</p> <p>13 thinking of satisfy /RA Mercer this afternoon when</p> <p>14 I made the statement you were interviewed twice</p> <p>15 MR. KELLY: Judge, excepting that avowal then</p> <p>16 I would ask for a stip /HRAEUGTS that presented to</p> <p>17 the jury that there is no record of that</p> <p>18 conversation with the detective on October 8</p> <p>19 THE COURT: Do you have any problem with that</p> <p>20 Ms. Polk.</p> <p>21 MS. POLK: Your Honor I do. Again this is a</p> <p>22 witness the defense has chose eastbound not to</p> <p>23 enter view. They had the opportunity to talk to</p> <p>24 her to /TPAUPBD out who she talked to and whether</p> <p>25 and there is no press dense for a stipulation to</p>	<p>1 the /KWR/BGS YCSO /SUP it high school been</p> <p>2 disclosed to the state</p> <p>3 MR. KELLY: /TUPBL.</p> <p>4 THE COURT: We'll be in recess.</p> <p>5 Mid lunch. Check. One two three</p> <p>6 THE COURT: The record will show the presence</p> <p>7 of Mr. Kelly for the defense. Mr. Ms. Polk and</p> <p>8 Mr. Hughes for the state. And it is one 20</p> <p>9 Mr. Kelly</p> <p>10 MR. KELLY: Judge --</p> <p>11 MS. POLK: Oh we were told the door is locked</p> <p>12 to get into the courtroom.</p> <p>13 THE COURT: That would make a difference.</p> <p>14 (Pause)</p> <p>15 THE COURT: The record will show the presence</p> <p>16 of /PR Ray and the attorneys. Mr. Kelly</p> <p>17 MR. KELLY: Judge in regards to my objection</p> <p>18 relating to the presentation of testimony relating</p> <p>19 to prior sweat lodges and prior sweat lodge</p> <p>20 experiences being conducted in Angel Valley. I'd</p> <p>21 like to make an offer of proof Judge. It involves</p> <p>22 Exhibit 245, which has been marked in this case and</p> <p>23 is not in evidence. If I may approach Judge.</p> <p>24 THE COURT: Yes.</p> <p>25 MR. KELLY: Exhibit 245 judge is the</p>